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**From:** Wehling, Carrie [Wehling.Carrie@epa.gov]  
**Sent:** 12/12/2019 7:31:36 PM  
**To:** Kupchan, Simma [Kupchan.Simma@epa.gov]; Wade, Alexis [Wade.Alexis@epa.gov]  
**Subject:** FW: ATTORNEY-CLIENT PRIVILEGE / INTERNAL - DELIBERATIVE - Non-Federal Designation of FL

But wait, there's more.....

Caroline (Carrie) Wehling  
Assistant General Counsel  
Water Law Office  
U.S. Environmental Protection Agency  
Washington DC 20004  
202-564-5492  
wehling.carrie@epa.gov

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**From:** Goodin, John <Goodin.John@epa.gov>  
**Sent:** Thursday, December 12, 2019 1:57 PM  
**To:** Frazer, Brian <Frazer.Brian@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>  
**Subject:** Fwd: ATTORNEY-CLIENT PRIVILEGE / INTERNAL - DELIBERATIVE - Non-Federal Designation of FL

FYSA

Sent from my iPhone

Begin forwarded message:

**From:** "Walker, Mary" <walker.mary@epa.gov>  
**Date:** December 12, 2019 at 1:52:23 PM EST  
**To:** "Fotouhi, David" <fotouhi.david@epa.gov>, "Ross, David P" <ross.davidp@epa.gov>  
**Cc:** "Goodin, John" <Goodin.John@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Palmer, Leif" <Palmer.Leif@epa.gov>, "Gettle, Jeaneanne" <Gettle.Jeaneanne@epa.gov>, "Ashbee, Blake" <ashbee.blake@epa.gov>  
**Subject:** RE: ATTORNEY-CLIENT PRIVILEGE / INTERNAL - DELIBERATIVE - Non-Federal Designation of FL

Can you and Dave and I have a quick call today? I can be available when you both are. I'll ask my assistant to try to set up a quick call.

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**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Thursday, December 12, 2019 1:28 PM  
**To:** Walker, Mary <walker.mary@epa.gov>; Ross, David P <ross.davidp@epa.gov>  
**Cc:** Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>  
**Subject:** RE: ATTORNEY-CLIENT PRIVILEGE / INTERNAL - DELIBERATIVE - Non-Federal Designation of FL

PRIVILEGED—DELIBERATIVE

Dave, Mary,

Thanks for the time to consider this issue further. I have discussed the matter with my staff, and we advise

Ex. 5 AC/DP

# Ex. 5 AC/DP

Of course, I'd be glad to discuss further.

Best,

David

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

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**From:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>  
**Sent:** Thursday, December 12, 2019 10:41 AM  
**To:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>; Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Cc:** Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>; Gettle, Jeaneanne <[Gettle.Jeaneanne@epa.gov](mailto:Gettle.Jeaneanne@epa.gov)>; Ashbee, Blake <[ashbee.blake@epa.gov](mailto:ashbee.blake@epa.gov)>  
**Subject:** RE: ATTORNEY-CLIENT PRIVILEGE / INTERNAL - DELIBERATIVE - Non-Federal Designation of FL

Thank you David.

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**From:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Sent:** Wednesday, December 11, 2019 4:04 PM  
**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>; Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Cc:** Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>; Gettle, Jeaneanne <[Gettle.Jeaneanne@epa.gov](mailto:Gettle.Jeaneanne@epa.gov)>; Ashbee, Blake <[ashbee.blake@epa.gov](mailto:ashbee.blake@epa.gov)>  
**Subject:** RE: ATTORNEY-CLIENT PRIVILEGE / INTERNAL - DELIBERATIVE - Non-Federal Designation of FL

Hi, Mary.

**Ex. 5 Attorney Client (AC)**

**Ex. 5 Attorney Client (AC)** I should be able to accomplish this and circle back with you by midday tomorrow.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

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**From:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>

**Sent:** Wednesday, December 11, 2019 3:22 PM

**To:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>; Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>

**Cc:** Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>; Gettle, Jeaneanne <[Gettle.Jeaneanne@epa.gov](mailto:Gettle.Jeaneanne@epa.gov)>; Ashbee, Blake <[ashbee.blake@epa.gov](mailto:ashbee.blake@epa.gov)>

**Subject:** Re: ATTORNEY-CLIENT PRIVILEGE / INTERNAL - DELIBERATIVE - Non-Federal Designation of FL

Dave and David,

**Ex. 5 Attorney Client (AC)**

On 12/11/2019 3:22 PM, David Fotouhi wrote:

If we should discuss please let me know and I'll have my folks set a call for tomorrow.

Thanks  
Mary

Sent from my iPhone

On Dec 6, 2019, at 2:20 PM, Gettle, Jeaneanne <[Gettle.Jeaneanne@epa.gov](mailto:Gettle.Jeaneanne@epa.gov)> wrote:

Mary, Dave and David,

Attached for your consideration are draft letters indicating EPA's voluntary action to designate FDEP as the non-Federal representative to conduct informal consultation and prepare a biological assessment in support of the state's potential request to assume administration of the CWA Section 404 program. These letters were prepared by our assumption team and reviewed by me, John and Steve. We understand that these drafts may require changes following conversations planned for next week.

**Ex. 5 Deliberative Process (DP)**

Please let me, John or Steve know if you need additional information or have any questions.

Thanks

Jeaneanne

<DRAFT Non-Federal Designation State of Florida Draft Letter to FDEP - 12-6-19\_.docx>

<DRAFT Non-Federal Designation State of Florida Draft Letter to NMFS - 12-6-19.docx>